HOUSE BILL REPORT
HB 1316

As Reported by House Committee On:
Technology, Telecommunications & Energy

Title: An act relating to utility taxation.

Brief Description: Modifying utility tax provisions.

Sponsors: Representatives Morris and Anderson.

Brief History:
Committee Activity:
Technology, Telecommunications & Energy: 2/11/03, 3/3/03 [DPS].

Brief Summary of Substitute Bill

- Provides that the intent of the Legislature is to replace the existing public utility tax system, which is based on gross receipts, with a system based on consumption.
- Provides that the intent of the Legislature is to provide a tax structure that is equitable for all types of providers, irrespective of where the utility service originates.

HOUSE COMMITTEE ON TECHNOLOGY, TELECOMMUNICATIONS & ENERGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Morris, Chair; Ruderman, Vice Chair; Sullivan, Vice Chair; Crouse, Ranking Minority Member; Nixon, Assistant Ranking Minority Member; Blake, Bush, Hudgins, Kirby, Romero, Tom, Wallace and Wood.

Minority Report: Do not pass. Signed by 4 members: Representatives Anderson, DeBolt, Delvin and McMahan.

Staff: Mark Matteson (786-7145).

Background:

Public utilities are subject to a number of taxes within Washington State. For electric businesses, these include the state public utility tax, property taxes, and the public utility district privilege tax.

State Taxes on Electricity Utilities

Washington State public utility tax. Public and privately-owned utilities, including light and power (L&P) businesses, are subject to the state public utility tax (PUT). The PUT is applied to the gross receipts of the business. For L&P businesses, the applicable tax rate is 3.873 percent. Revenues are deposited to the State General Fund.

While L&P businesses are defined to include plants or systems that generate, produce, wheel, or distribute electrical energy, businesses that wholesale electrical energy are exempt on income derived from wholesales. Thus, with respect to taxation of electricity businesses, the PUT effectively applies to retail distribution utilities only.

The PUT does not permit deductions for the costs of doing business, such as payments for raw materials and wages of employees. Nonetheless, several deductions and credits for specific types of business activities are allowed under the PUT. In addition to the wholesales of electrical energy, these activities include production of energy through cogeneration or by using renewable energy resources; the distribution of electricity by L&P businesses whose customers are geographically disbursed; sales of electricity to direct service industrial businesses; and discounts to low-income customers.

Montana wholesale energy transaction tax. On January 1, 2000, a new wholesale energy transaction (WET) tax went into effect in the State of Montana. The tax is imposed upon all electricity transmitted and sold within Montana. The tax rate is set at 0.015 cents per kilowatt-hour. If the electricity is produced in-state and sold out of state, the taxpayer is the person owning the electrical generation property, and the tax is collected by the transmission services provider. If the electricity is produced in-state for delivery in-state, or is produced outside the state for delivery in-state, the taxpayer is the distribution services provider, and the tax is collected by the transmission services provider.

The Montana WET tax includes several exemptions, including electricity that is transmitted through the state that is neither produced or consumed in the state; electricity generated in the state by an agency of the federal government for delivery outside the state; electricity delivered to a purchaser that receives its power directly from a transmission or distribution facility owned by an entity of the United States government; and electricity that has been subject to the transmission tax in another state.

The Montana WET tax is collected quarterly and is due 60 days after the end of the quarter to which the tax applies. The revenue from the tax is deposited in the Montana general fund.

Taxes "In-Lieu" of Property Tax: Public Utility District Privilege Tax.

Public utility districts (PUDs) that generate, transmit, or distribute electricity are subject to a tax known as the public utility district (PUD) privilege tax. The state tax is generally considered a tax "in-lieu" of property taxes, since local jurisdictions are prohibited from levying property taxes on public property. Tax receipts are shared with local governments and are distributed in a manner that somewhat approximates the way in which property taxes would be distributed.

The PUD privilege tax includes three separate tax bases: electricity that is distributed to PUD customers; electricity that is generated by PUDs at hydroelectric and other facilities; and electricity that is generated by thermonuclear facilities on federal lands, which applies specifically to the nuclear generation facility operated on the Hanford reservation by Energy Northwest. On electricity distributed to retail PUD customers, the tax rate is 2 percent of the gross revenue received from the retail sales. On electricity that is generated, the tax rate is equal to 5 percent of the first 0.4 cents of wholesale value of each kilowatt-hour of electricity. On electricity that is generated by the Hanford thermonuclear plant, the tax rate is 1.5 percent of the wholesale value of the electricity. An additional surtax is applied to each rate, equal to 7 percent multiplied by the rate.

Under the PUD privilege tax, municipalities are permitted to tax PUD facilities located within a city. The tax is based on the gross revenues from the sale of electricity to consumers within the city. The rate is unspecified but presumed to be no more than 6 percent, the same as the rate for taxes on other electric utilities that operate in cities.

The PUD privilege tax is administered by the Department of Revenue (Department). The administrative requirements of the taxpayers and the department differ than those under other excise taxes. For example, PUDs are required to file annual reports of taxable activity, whereas under the state public utility tax taxpayers may be required to file monthly. In addition, there are specific provisions for sharing the tax revenues with the local jurisdictions in which the PUD assets are located. The tax also includes provisions for the circumstance in which the PUD acquires private property for the purpose of operating electrical facilities. Under these provisions, the PUD is authorized or required to make payments to affected local governments.

In the 1999 state budget, the Department was directed to do a study of the taxation of the electric industry within Washington State. The Department’s study provided an examination of state and local taxes paid by the electric industry, evaluated the possible effects of Washington taxes on interstate and intrastate competition and on economic development within the industry, and offered various taxing options for consideration. Among other conclusions, the Department found that for entities that own electrical generation assets, the tax system places a bigger burden on investor-owned utilities than public utilities. The bigger burden is a result of differences between property taxes paid by privately held investor-owned utilities and PUD privilege taxes and compensatory payments paid by PUDs and municipal utilities.

Wholesale Telecommunications Services Offered by Public Utility Districts

In 2000 the Legislature provided public utility districts and port districts the authority to provide wholesale telecommunications services. The law allowed PUDs and port districts to utilize excess capacity on high-speed telecommunication infrastructure that had been installed for utility communications purposes. Under the law, these districts could sell this capacity to internet service providers and other telecommunications service retailers to provide services to customers both within and outside of the districts.

The high-speed telecommunication infrastructure is not subject to property taxes, since the districts are public. There is no tax "in-lieu" of property tax on the infrastructure.

Summary of Substitute Bill:

The bill provides that the intent of the Legislature is to replace the existing public utility tax system, which is based on gross receipts, with a system based on consumption, and to provide a tax structure that is equitable for all types of providers, whether the utility service originates in the state or outside the state.

Substitute Bill Compared to Original Bill:

Removes the provisions that replace the state public utility tax on light and power businesses with a wholesale energy transaction tax on the volume of electricity transmitted within the state. Removes the provision that sets the rate for the new volumetric tax at 0.2 cents per kilowatt-hour for electricity that is delivered for distribution or produced for export from the state. Removes the provision that recreates the tax exemptions, deductions, and credits under the public utility tax for light and power businesses as exemptions or credits under the new volumetric tax. Removes the modification to the public utility district privilege tax to subject all public utilities to the privilege tax. Removes the provision that increases the rates under the privilege tax relating to electricity services and sales. Removes the provision that imposes a new tax on sales of wholesale telecommunication services by public utilities.

Provides that the intent of the Legislature is to replace the existing public utility tax system, which is based on gross receipts, with a system based on consumption. Provides that the intent of the Legislature is to provide a tax structure that is equitable to all types of providers, relative to out-of-state providers and relative to one another within the state.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: This bill is intended to address some key policy concerns. The first is whether taxes should be tied to rate increases. Currently, if rates go up, our taxes go up. The second is how to create a system that punishes taxpayers as little as possible. This bill includes a volumetric tax that includes a more stable tax base, consumption, in which conservation would be encouraged. You could lower your tax bill by consuming less. Another issue is the timing: should a new system be phased in quickly or over time? Maybe a gradual approach would minimize price shock. Another significant policy issue is whether in-state generators should face an 8 percent disadvantage relative to out-of-state generators. Finally, an important issue is whether governmental entities should receive an effective tax advantage under the system of utility taxation, relative to private utilities.

(With concerns) We have concerns, although we agree with the goals of the legislation. We are concerned about the uncertainty and the risks. Is this the right change at this time? Many of our utilities serve customers in rural areas, including irrigators. Income depends on a small number of customers. Moreover, my members are not a homogenous group, and some are helped by this bill, while others are hurt. There will be impacts to individual customers. In many cases, taxes will go up.

At Clark Public Utilities, we've faced two BPA rate increases this year already. The provisions of the bill concerning tax on gas distribution is also important to us. This bill attempts to treat electricity like property, which is conceptually difficult with something that is delivered instantaneously. The rates under this bill would adversely affect our customers.

We at Benton County Public Utility District (PUD) receive all our power from the BPA. Our overall tax burden actually decreases under the volumetric piece. Even so, there are winners and losers among rate classes. For instance, large irrigators and industrial customers would be adversely affected. We estimate that we pay about $300,000 more under the PUD privilege tax than if we were subject to and paid under the property tax.

The privilege tax increase would cost Mason County PUD about $50,000 more than we are currently paying.

Changes in the electric industry have created a need to reexamine the taxation system. The big question with respect to this bill is what the unintended consequences are. While it is intended to be revenue neutral, there are a number of shifts of tax burden among existing taxpayers. The privilege tax increase would hit Puget Sound Energy hard, since purchases from mid-Columbia PUDs would include the effect of the privilege tax. We would note that there is also a potential problem with the bill because there appears to be nothing that would prevent a municipality from reimposing a gross receipts tax if they don't like the volumetric tax.

Testimony Against: The Association of Washington Cities is opposed to this bill. The cities of Seattle, Tacoma, and Centralia already make compensatory payments to the counties in which they own generation facilities. Our calculations show that there will be a $30 million impact to municipal utilities. Our utilities are already facing steep rate increases from the Bonneville Power Administration (BPA) of about 25 percent. This is not an inconsequential tax. Cities should be indemnified with respect to the provision of distribution services.

We agree with the goal of leveling the playing field, but disagree with the approach. Our analysis shows that this will cost Tacoma ratepayers $10 million per year. In 1999 we did an assessment that evaluated what an independent power producer would pay if that person owned our Mossyrock facility. This bill would more than double the amount of property tax owed if the facility were privately owned.

For Douglas Public Utility District, we anticipate that our Wells Hydroelectric Project effective prices would rise 14 to 17 percent. The prices faced by others that consume our power would rise by 8 percent. Our current rates are low, but consumption is fairly high. Some of our power is delivered to others effectively at cost. This tax change would prolong the smelter shutdown, and would impact school districts adversely. The bill would shift the tax burden to economically distressed areas. This would penalize jurisdictions that have developed their systems based on policies set in place 50 years ago. Nothing in here would provide incentives for renewable power.

At this time in the economy, business believes that the Legislature should forego any new or increases in energy taxes. The high cost of energy is having a negative impact on the industrial customer base. During the recent crisis of a couple of years ago, Boeing paid rates that were 10 times what has been historically paid. One of the principal reasons that industrial businesses have located here in the past is the low cost and the reliability of power.

We believe that the volumetric tax might be more predictable; however, in its current form the bill creates a tax shift onto industrial customers of about 25 percent. Also, the rates in this bill are based on expected revenues resulting from historically high utility rates. We expect that rates, and resulting revenues, will come down. Thus we think that the manner in which revenue neutrality is defined should be reexamined. With respect to the privilege tax component, our customers in those jurisdictions will end up paying. These same customers have already had to deal with a BPA rate increase.

We would not support any changes of the tax code that would increase the ultimate tax burden of power producers. In its current form, this bill does that.

Longview Fiber anticipates increases in costs on the order of $1 million per year. We've already dealt with BPA rate increases. In addition, we are not in the position of being able to pass costs along to customers.

We are concerned about the changing basis in this bill. We appreciate the level playing field objectives, but this would be an effective price increase, especially for PacifiCorp's larger commercial customers.

Testified: (In support) Representative Morris, prime sponsor.

(With concerns) Dave Clinton, Washington Rural Electric Co-Op Association; Chad Bartram, Benton Public Utility District; Annette Creekpaum, Mason Public Utility District #3; Richard Dyer, Clark Public Utility District; and Mike Tracy, Puget Sound Energy.

(Opposed) Bill Dobbins, Douglas County Public Utility District; Tim Boyd, Industrial Customers of Northwest Utilities; Steve La Fond, The Boeing Company, Stan Finkelstein, Association of Washington Cities; Pat McCarty, City of Tacoma Power; Curt Copenhagen, Longview Fibre Company; Kathleen Collins, PacifiCorp; Kristen Sawin, Association of Washington Business; and Robert Kahn, Northwest Independent Power Producers Association.